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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

To: The Commission

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REPLY COMMENTS OF
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SUMMARY

The Commission must act promptly to repeal or significantly relax regulations that needlessly handicap broadcasters from effective competition, if free television is to remain a viable force in the nation. Antiquated rules, long outliving their original purposes, unduly threaten single channel broadcasters already challenged by nascent and growing multi-channel competition from cable, direct broadcast satellites, wireless cable, and telco/utility company-supported video platforms benefitting from dual revenue streams.

The Duopoly Rule has become inconsistent with its base rationale of promoting competition and diversity. Reform is clearly appropriate. The current Grade B contour overlap ban is overbroad. Its impact is to bar common ownership of stations in adjacent areas with either an incidental or insignificant relationship.

Designated Market Areas ("DMAs") are workable, marketplace-recognized boundaries delineating common viewing patterns in areas of effective competitive that facilitate transactions between advertisers and broadcasters. A mere surrogate for an area of competition is unnecessary when an actual, objective, marketplace definition is available. DMAs are clearly the more accurate and significant measure of a market's true nature for purposes of enforcement of a rule based on the character of that market. Not subject to vagaries of predicted versus actually measured signals, DMAs provide the Commission with the administratively workable definition for Duopoly Rule enforcement that it seeks. Programming (including news) is specifically

designed for a DMA audience and ascertainment of community needs and interests is conducted within a DMA. There is no incentive for, or likelihood of, broadcasters programming for audiences outside their DMA. A DMA-based rule has no impact on the program supply market, as exclusivity for program distribution is granted by both networks and non-network program syndicators based on DMAs. Television advertising time is likewise sold on the basis of ratings measured only in a single DMA. Broadcasters cannot profit from unmeasured fringe viewership outside the specific DMA and have no power to manipulate advertising rates by virtue of common ownership in adjacent DMAs since advertisers seek discrete markets.

Finally a DMA-based rule would enhance broadcasters' viability by enabling them to realize economies of scale and reduce operating costs permitting more and enhanced programming. Shared equipment, administration and personnel would enhance the viability and ability of commonly-owned and operated stations in adjacent DMAs to provide higher quality programs and meet increased programming demands.

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<u>ALLBRITTON COMMUNICATIONS COMPANY</u>

Allbritton Communications Company, its subsidiaries and affiliated companies (collectively "ACC"), by their attorney, respectfully submit these Reply Comments in response to a Further Notice of Proposed Rulemaking ("Further Notice") in which the Commission has expanded its reassessment of its television station ownership rules.

ACC supports the Commission's effort to reassess its rules in the dynamic video marketplace. Dramatically expanding video options for viewers have radically skewed the traditional assessment of ownership patterns in relevant markets. This is nowhere more apparent than with respect to the current Duopoly Rule. Originally intended to promote competition and diversity in local markets, the Rule now inhibits this effort by prohibiting common ownership of television stations serving disparate though adjacent local areas. The dramatic increase in available substitutes for broadcast television since the Rule's inception in 1940 cannot be overstated. This level of competition continues to increase geometrically with the deployment of video substitutes: video cassette recorders, video discs, interactive cable, MMDS, direct broadcast satellites, telco distributed video platforms and utility company-provided video product.

The current Duopoly Rule is now far broader than necessary or appropriate to accomplish the Rule's objective with the unintended counter-productive effect of limiting ownership patterns that promote efficiencies. The Rule now precludes potential economies that will lead to greater amounts and increase quality programming despite the lack of any adverse impact on competition or diversity.

The Commission is seeking an "administratively convenient" geographic area through which to assess the impact of common ownership on diversity and competition.[1] Among the options listed by the Commission are predicted Grade A or Grade B contours, Metropolitan Statistical Areas and Designated Market Areas ("DMAs").[2] Of these options, the single appropriate standard is the DMA.

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[1] Further Notice, Paragraph 76.

[2] Further Notice, Paragraph 32.

Importantly, the Commission appears to suggest that DMAs are larger than predicted Grade A contours.[3] This is not necessarily the case. There are numerous markets in which the predicted Grade A contour is approximately equal in size or larger than the DMA or extends beyond the DMA border.[4] To adopt a rule purely on a predicted signal contour without reference to the actual competitive impact in the marketplace would further stretch the already strained relationship between the Rule and its underlying rationale.

As noted by CBS, Inc., Westinghouse Broadcasting Company and Capital Cities/ABC in their Comments in this proceeding, the true geographic arena of competition for a broadcast television station is its DMA. DMAs are workable, unambiguous, marketplace-recognized boundaries delineating both common viewing patterns and areas of effective competition that facilitate transactions between advertisers and broadcasters. The Commission has recognized "that the DMA region definition may be more descriptive of a broadcast television station's potential market."[5] Actual marketplace-defined areas of competition should be favored as a matter of course over mere predicted surrogates for those areas. Among their attributes, DMAs:

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3 Id.

4 Washington, D.C.'s DMA, for example, stops at the Montgomery/Howard County line. Stations licensed in the Washington DMA, however, place a Grade A signal that encompasses most, if not all, of Howard County.

5 Further Notice, Paragraph 122.

- ✦ Avoid the vagaries of predicted versus actual measured signals;
- ✦ Are established at arms length by an independent measuring entity with no affiliation with broadcast stations;
- ✦ Are re-evaluated periodically to adjust boundaries to describe actual marketplace viewing and relationships; and
- ✦ Define zones of effective competition for both advertising sales and programming distribution.

Although a television station may have viewers outside its DMA, it does not compete for those viewers since television advertising is sold on the basis of ratings measured <u>only</u> in the station's own DMA. There is no profit from viewers outside the DMA and no power to manipulate advertising rates by virtue of a combination with a station in another DMA. Advertisers seek and serve discrete markets -- markets defined by DMAs not by predicted signal contours. Since a station's Grade B contour frequently exceeds the geographical borders of its DMA, the current prohibition on Grade B overlap between co-owned stations bars common ownership of non-competing stations. This over-inclusive Rule impedes potential marketplace efficiencies such as common management, equipment sharing and combined personnel while providing no benefit to the public.

Co-ownership of stations outside the same DMA, notwithstanding a degree of Grade A overlap, is consistent with the original purpose of the Duopoly Rule. Common ownership within the same DMA at least with non-overlapping Grade A contours is also consistent with this purpose. Owners of stations in geographically large DMAs that can accommodate more than one co-owned station without overlapping Grade A signals should not be penalized simply because of the size or topography of the market, typically rural, rugged and sparsely populated areas.

The Commission has expressed concern not only for the advertising sales product market but also for the video programming market. A DMA-based Duopoly Rule would have no significant economic impact on either market. Because of the ratings-based profit structure in the industry, there is no economic incentive to program for audiences outside a station's DMA. Programming, including news, is designed for the DMA audience; ascertainment of community needs and interests is conducted within a DMA; and issues lists required by the Commission are compiled from that ascertainment. Moreover, network non-duplication and syndicated exclusivity protection are granted, not on a signal contour basis, but rather on a DMA basis. Co-ownership of stations serving disparate DMAs, therefore, cannot reduce competition in the delivered video program market.

The impact on diversity of viewpoints is also a concern of the Commission as it re-evaluates the local ownership rule. Contrary to the unsupported conclusions of Black Citizens for Fair Media et.al in their Comments in this proceeding, the pervasive availability of alternate video distribution provides an additional, compelling, diversity-related, rational basis for narrowing the scope of the Duopoly Rule. The Rule was crafted at a time when television viewers had at most three or four home video alternatives. Today, with 35 channel cable systems the norm, direct broadcast satellites and wireless cable a national reality, 81% market penetration for video cassette recorders and telco video distribution a virtual certainty, the predicate for government-promoted diversity no longer has the compelling urgency of the original Duopoly Rule rationale. Adhering to an ownership rule adopted at a time of relative viewpoint scarcity is no longer justified at a time of geometrically growing multiplicity of voices. As the Commission noted in dismantling the Regional Concentration of Control Rule over a decade ago, "this substantial rise in the multiplicity of media voices considerably attenuates both *the diversity* and economic competition justifications underlying our regulatory limitation of multiple ownership on the regional level."[6] This, of course, was well before the advent of DBS, MMDS, cable channel expansion and telco video distribution. The argument for repealing the regional ownership rule is even more forceful today on a local level, enhanced by each succeeding video option available to the viewer.

Significantly, a DMA-based Rule would enhance television broadcasters' viability by enabling them to realize economies of scale and reduce operating costs thereby permitting more and/or enhanced programming. While not in separate DMAs, ACC's properties in Washington, D.C. may serve as an example of the types of operating synergies that can be realized in the same or adjacent DMAs. In the

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6 Report and Order, Repeal of "Regional Concentration of Control" Rules, 101 FCC 402, 410 (1984), recon.denied, 58 RR2d 119 (1985) (emphasis supplied).

Washington, D.C. market, ACC, through its affiliated companies, operates both the ABC-affiliated station, WJLA, and a 24-hour cable television all news programmer, NewsChannel 8. Although not regulated by the Commission as a broadcast television station, NewsChannel 8 has some significant operating characteristics that resemble a television station operation including departments for newsgathering, advertising time sale, operations and engineering, human resources, promotions and community relations.

There are significant synergies that ACC is taking affirmative steps to realize between WJLA and NewsChannel 8. The company recently combined several operating departments of both entities to form a new corporation, 78 Inc. The mission of this new company is to use the economies of selected personnel to provide services back to each station on a contract basis by providing essentially an in-house sales representative, advertising agency and program consultant. By eliminating selected redundant functions, services can be streamlined, equipment use can be maximized and personnel can provide economical, consistent and efficient services. This should free-up resources to enhance programming provided by the separate editorial staffs of each entity.

Sharing of sophisticated and costly equipment by news departments in adjacent DMAs could provide significant enhancements to the viewers in both markets. This equipment could include electronic newsgathering equipment, helicopters and news vehicles. The cost of a satellite news gathering vehicle, for example, is approximately $400,000 with an additional $30,000 to $50,000 annually in operating costs. Part-time operation of the equipment by a single station may make the purchase of the equipment economically infeasible. Spreading the use and expense over two stations in adjacent markets may convert, through shared costs and enhanced utilization, acquisition of such equipment into a sound investment. Similarly, the cost of a basic non-linear editing suite used for commercial production, promotional graphics and news editing is approximately $250,000. Stations in adjacent DMAs could economically coordinate the use of such equipment to make the acquisition of such equipment not only feasible but also a sound investment. Other synergies involving common human resources, financial and administrative personnel can lower the operating costs of stations with the resulting ability to direct more resources to enhance programming.

Those economies, of course, have no negative impact on the underlying purpose of the Commission's Duopoly Rule from either a diversity of viewpoint or effect on competition perspective. The Commission has long recognized that many efficiencies may result from common station ownership including shared equipment, consolidated accounting, billing and payroll. Taken together, these circumstances militate strongly in favor of permitting adjacent DMA-based market ownership.

Conclusion

Broadcast television faces formidable competitive challenges from its existing and emerging adversaries. In this unsteady, mutating marketplace, structural limits on station ownership must be tuned as finely as possible to meet their stated purpose. Anachronistic rules not grounded in a demonstrable need are unfair and counter-productive in burdening improvements in broadcast service, disserving the very public meant to be protected. The record in this proceeding furnishes abundant support for the Commission to relax the Duopoly Rule to one based upon DMAs.

Respectfully submitted,

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